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Supreme Court of the United States

OCTOBER TERM, 19[illegible]

Board of Alien Property Register,

Petitioner,

v.

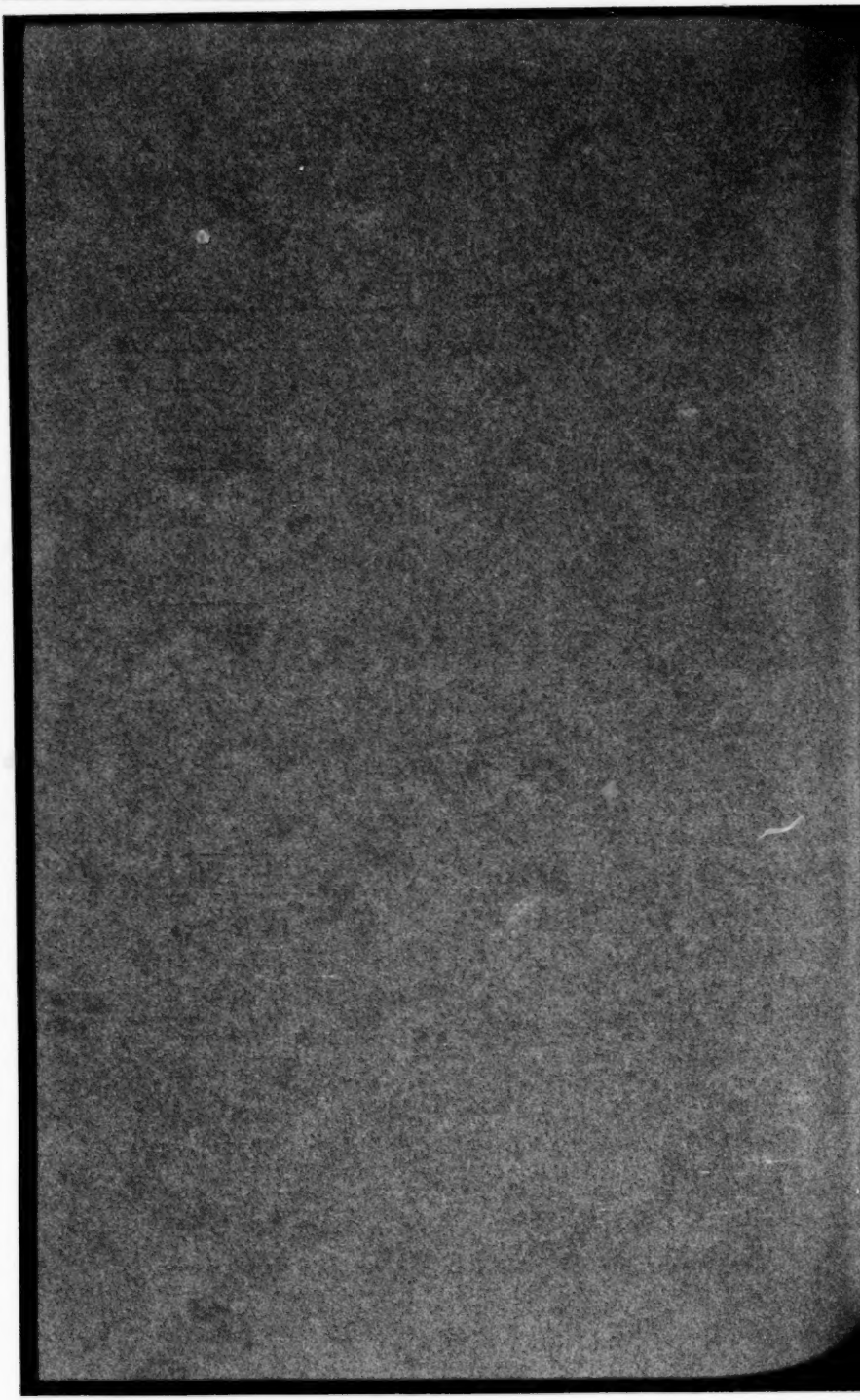
Commissioner of Internal Revenue,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE PETITION

Percy Savoy,
Counsel for Petitioner.

Chauncey P. Carter
Howard M. Barrett,
Of Counsel.



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CITATIONS

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 595

ESTATE OF ANNIE PRESTON BASSETT,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

QUESTION PRESENTED

Are the following gifts, made by the decedent, to be included in the gross estate, as transfers made in contemplation of death, within the meaning of Section 811(c) of the Internal Revenue Code?

January 25, 1941	Preston R. Bassett, Son	$ 3,950.00
"	Marion B. Luitweiler, Daughter	3,950.00
"	Isabel B. Wasson, Daughter	3,950.00
"	Howard M. Bassett, Son	3,950.00
"	Helen B. Hauser, Daughter	3,950.00
June 21, 1941	Preston R. Bassett, Son	$11,750.00
"	Marion B. Luitweiler, Daughter	11,791.00
"	Isabel B. Wasson, Daughter	11,850.00
"	Howard M. Bassett, Son	11,884.00
"	Helen B. Hauser, Daughter	11,983.00
October 1, 1941	Margaret Bassett, Grandchild	$ 3,000.00
"	Preston Bassett, Jr., Grandchild	3,000.00
"	Allen Bassett, Grandchild	3,000.00
"	William Bassett, Grandchild	3,000.00
"	Elizabeth Ann Bassett, Grandchild	4,000.00
"	Edward M. Bassett, II, Grandchild	4,000.00
"	Dorothy Bassett, Grandchild	4,000.00
"	Bobby Luitweiler, Grandchild	4,000.00
"	Jimmy Luitweiler, Grandchild	4,000.00
"	Marion Luitweiler, Daughter	4,000.00
"	Elizabeth Wasson, Grandchild	4,000.00
"	Edward Wasson, Grandchild	4,000.00
"	Anne Wasson, Grandchild	4,000.00
"	Joan Hauser, Grandchild	4,000.00
"	Mary Hauser, Grandchild	4,000.00
"	Edward Hauser, Grandchild	4,000.00
November 1, 1941	Jeanne Bassett, Daughter-In-Law	$3,915.00
"	Marion Luitweiler, Daughter	3,915.00
"	Lorion Bassett, Daughter-In-Law	3,915.00
"	Alfred Hauser, Son-In-Law	3,915.00
"	Theron Wasson, Son-In-Law	3,915.00
January 12, 1942	Preston Bassett, Son	$ 3,988.00
"	Jeanne Bassett, Daughter-In-Law	3,988.00
"	Isabel Wasson, Daughter	3,988.00
"	Theron Wasson, Son-In-Law	3,988.00
"	Helen Hauser, Daughter	3,988.00
"	Alfred Hauser, Son-In-Law	3,988.00
"	Howard Bassett, Son	3,988.00
"	Lorion Bassett, Daughter-In-Law	3,988.00

REASONS FOR GRANTING THE WRIT

(1) *The Court of Appeals erroneously held that the statutory presumption, which applies to "any transfer of a material part" of the property of the decedent, also applies to individual gifts, which may aggregate a material part, although, by that Court's own statement, "none of the separate gifts in this case was a material part, of the decedent's property."*

The portion of Section 811(c) of the Internal Revenue Code applied to this case by both the Tax Court and the Court of Appeals, reads, as follows:

> ". . . *Any transfer of a material part* of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;"

This sentence has appeared in all taxing statutes since the Revenue Act of 1916 and was made a part of the Internal Revenue Code in 1939.

In the Revenue Act of 1926, the sentence involved herein is preceded by the following:

> ". . . *Where within two years prior to his death* but after the enactment of this Act and without such a consideration *the decedent has made a transfer or transfers,* by trust or otherwise, *of any of his property,* or an interest therein, *not admitted or shown to have been made in contemplation of* or intended to take effect in possession or enjoyment at or after his *death, and the value or aggregate value,* at the time of such death, *of the property* or interest *so transferred to any one person is in excess of $5,000 then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death* within the meaning of this title." (Italics supplied.)

Again, the gift tax, under the Revenue Act of 1924, was imposed, after deducting *annually* an *exemption* of $50,000, and "gifts the *aggregate amount of which to any one person does not exceed $500.*" (Sec. 321.) This provision was repealed by the Revenue Act of 1926.

A tax was again imposed on net gifts by the Revenue Act of 1932. The first $5,000 paid to any one person in any one year was not to be included in the net gifts taxable. (Sec. 504(b)). The deduction of an exemption of $50,000, in the computation of net gifts taxable, was reduced, for any taxable year, by "the aggregate of the amounts claimed and allowed as specific exemption for preceding calendar years." (Sec. 505(a)(1)).

Thus, in both the Estate Tax and Gift Tax provisions, whenever Congress intended to cover the aggregate of transfers or gifts, it said so in clear, unmistakable language. It did not do so, in the last sentence of Section 811(c), involved herein.

The provisions of the statutes mentioned show that Congress knew in 1916, 1926, 1932 and 1939, and still knows, the difference between the aggregate of transfers, and "any transfer of a material part" of a person's property. In the only statute where Congress sought to tax both the aggregate of transfers and any transfer of a material part, the Revenue Act of 1926, it is clear that Congress had the two different situations in mind and used the appropriate language to express each.

It is equally clear that the last sentence of Sec 811(c), that involved herein, covers only *a transfer of a material part* and not the aggregate of transfers of small amounts which, when added together, constitute a material part. Had Congress intended otherwise, Congress would have said so in unmistakable language, as it did when it sought to tax certain aggregates of transfers, in 1926 and 1932. Yet, the Courts below both had to, and did, add all the individual gifts, in order to bring this case within the statutory presumption, without statutory authority. This is reviewable error.

Respondent, in its Brief in Opposition, p. 8, suggests that the Court of Appeals was correct in adding the individual small gifts, so that the statutory presumption will apply. Otherwise, it is said, a person could give away his entire estate in small amounts, without fear of the presumption. The fact is that a person may dispose of his entire estate, by giving in small amounts excluded from the net gifts, or exempted, without fear of the presumption, under the statute as written. Of course, the first sentence covers all transfers, including small transfers, actually made in contemplation of death, but the presumption does not apply to them.

The fact that the regulations provide that only "transfers made by the decedent during his life of an amount of $5,000, or more, * * * must be disclosed in the return" of the estate shows that the Bureau, until this case, followed the statute as written and without adding to it.

The question of Federal law involved is definitely of national importance. Appendix I shows the thousands of gift tax returns filed annually since the Revenue Act of 1932. More gift tax returns have been filed, on account of gifts made in 1941 and thereafter, than estate tax returns. Too, gift tax returns are filed, after the exclusions of $5,000, 1932–1938; $4,000, 1939–1942; $3,000, 1943–1946, per person per year, and after exemptions of $50,000, or $40,000, or $30,000.

If this decision is to stand and be considered the law in the Second Circuit, and, if followed, very obviously a large number of donors can be taxed to an extent not intended or contemplated by Congress.

That the question is of national importance is further evidenced by the fact that experts of the Chamber of Commerce testified on the subject of exclusions in the hearings in connection with the Revenue Act of 1942. (Appendix III). It is well known that their testimony is limited to questions of general importance.

It is very obviously important to thousands of taxpayers, who have made excludable gifts during their lifetimes, that

only a transfer of a material portion of their property is subject to the two-year presumption, and that individual gifts, excluded or exempted under the gift tax law, are not to be added together and subjected to the presumption. If Congress desires to have such gifts totalled and subjected to the presumption, it has the power to do so by statute. It is not within the power of the Courts to do so by decision. The Courts below committed reviewable error in so doing, and their action should be reversed by this Court.

Respondent, at page 6 of the Brief in Opposition, says that the Tax Court based its "conclusion that the gifts made in 1941 and 1942 were made in contemplation of death * * * not upon the statutory presumption but upon the record as a whole". Respondent's statement is based upon the claim that gifts made on March 1, 1940, though within two years of the date of death, "were not included in the Tax Court's finding."

The fact of the matter is that these gifts, made in 1940, *are* included in the findings of fact (R. 31) but are *not* included in the Opinion, where the Tax Court has incorporated its ultimate conclusions of fact.

Furthermore, the statutory language relied upon by the Tax Court as the sole basis for its Opinion is that of the statutory presumption. (R. 33).

Even if the Tax Court had relied upon the record as a whole, or the statute as a whole, and not on the statutory presumption, which is not the case, Petitioner, under (2), which follows, will urge that the Tax Court and the Court of Appeals committed errors, which this Court should review.

(2) *The Circuit Court of Appeals erred in sanctioning a clear departure from the accepted and usual course of judicial proceeding, by failing to reverse the ultimate conclusion of the Tax Court that the gifts were made in contemplation of death, contained in the Opinion and not found in, nor required by, the findings of fact, contrary to the uncontradicted testimony and based on pure conjecture.*

That the ultimate conclusion or finding of fact that gifts were made in contemplation of death is to be reached in the findings of fact and not in the Opinion is recognized in *United States* v. *Wells,* 283 U. S. 102, 120, where this Court said:

> "We are not at liberty to refer to the Opinion for additional findings."

While, in that case, the ultimate conclusion followed naturally from the findings, that is not true in the subject case. The findings of fact herein amply support the conclusion that the gifts in question were *not* made in contemplation of death. The decision below is in clear conflict with what was said by this Court (but not there applied) in *United States* v. *Wells, supra.*

That the Tax Court may not ignore the uncontradicted testimony and make findings of fact based on pure conjecture, and that, when it does so, it is reversible error, is amply supported by decisions of the Circuit Courts of Appeals. *Chicago Railway Equipment Co.* v. *Blair* (C. C. A. 7th), 20 F. (2d) 10; *Boggs & Buhl* v. *Commissioner* (C. C. A. 3rd), 34 F. (2d) 859; *Citrus Soap Co. of California* v. *Lucas* (C. C. A. 9th), 42 F. (2d) 372; *Pittsburgh Hotels Co.* v. *Commissioner* (C. C. A. 3rd), 43 F. (2d) 345, cert. den. 275 U. S. 546; *Planters' Operating Co.* v. *Commissioner* (C. C. A. 8th), 55 F. (2d) 583.

The principle—the accepted course of judicial proceeding—contained in those cases and applicable herein is well expressed, in *Boggs & Buhl* v. *Commissioner, supra:*

"While the board may, as a general principle, reject ex-

> pert testimony and reach a conclusion in accordance with its own knowledge, experience, and judgment, yet it must have knowledge of and experience with the particular subject under consideration. There is no evidence that the board had any independent and personal knowledge whatever of the business, reputation, and good will of the petitioner. Therefore it could not set aside or disregard all the positive and affirmative evidence as to the value of the good will, and base its conclusion upon conjecture."

It is respectfully urged that the rule applied to taxpayers in the Third, Seventh, Eighth and Ninth Circuits should apply equally to taxpayers in the Second Circuit.

The 80th Congress, by Section 36 of Public Law 773, effective September 1, 1948, defining the jurisdiction of the United States Circuit Courts of Appeals, required the Court of Appeals to follow the foregoing decisions of the other Circuit Courts. This question has not been, and should be, settled by this Court.

Respondent, in its Brief in Opposition, p. 6, asserts that there is ample evidence to support the Tax Court's conclusion that the gifts in question were made in contemplation of death. "Hence, its finding should be accepted" by this Court. *Allen* v. *Trust Co. of Georgia,* 326 U. S. 630, and *United States* v. *O'Donnell,* 303 U. S. 501, 508, are cited in support thereof.

Petitioner again reiterates that this conclusion—the ultimate fact—is contained, not in the findings of fact, but in the Opinion, and that resort cannot be had to the Opinion to supplement its findings.

Furthermore, in reaching this conclusion, in its Opinion, the Member of the Tax Court ignored the uncontradicted testimony of unimpeachable witnesses and based his conclusion on pure conjecture.

In these circumstances, the cases cited by Respondent are not authority. *Allen* v. *Trust Co. of Georgia, supra,* cites *United States* v. *O'Donnell, supra,* which, in turn, cites among other cases *United States* v. *State Invest. Co.,* 264 U. S. 206,

Shappirio v. *Goldberg*, 192 U. S. 232, 240; *Page* v. *Rogers*, 211 U. S. 575, 577; *Washington Securities Co.* v. *United States*, 234 U. S. 76, 78, and *National Bank* v. *Shackelford*, 239 U. S. 81.

In *United States* v. *State Invest. Co., supra*, this Court noted that the question of a boundary is one of fact and that the district court and the court of appeals had determined the boundary "from the evidence", and said, at page 211:

> "Under the well-settled rule these concurrent findings on questions of fact will be accepted by this court *unless clear error is shown.* (Cases)
>
> "*An examination of the evidence*—which need not be recited here—discloses no such error; and, on the contrary, leads us to the conclusion that the findings of the lower courts are in accordance with the weight of the testimony." (Italics supplied).

The evidence was examined to see if error had been committed in the findings of fact, to the prejudice of the appellants, in each of the other cases cited above.

Too, there was not presented in any of those cases the question herein—whether the Tax Court is to be permitted to make findings of fact, in its Opinion, contrary to the evidence, and whether the sanctioning of such a procedure by the Court of Appeals calls for a review and reversal of its decision by this Court.

Petitioner respectfully urges that herein there is clear error shown, as the ultimate conclusion of fact of the Tax Court is in its Opinion and is contrary to the uncontradicted testimony. There should, therefore, be a review by this Court, and the decision below should be reversed, by application of the rules of law cited by Petitioner above.

The witnesses for Petitioner were two persons in their eighties (R. 56), with nothing to gain personally by not telling the absolute truth, and the Doctor. The longevity of decedent's family (R. 138), the true state of mind of decedent, looking toward future living and not contemplating death, as shown by her acts and conversations (R. 101–

102, 108, 134–138, 143), the history of gift-making by decedent and her husband, *jointly*, under a common plan, for many years (R. 31 and 150, 69–72, 95–100, 124–125, 131–133), for valid reasons having no connection with death, all supported by uncontradicted testimony, while partially to be found in the findings of fact, were ignored by the Tax Court in reaching its ultimate conclusion. Finally, the true dominating and impelling motives for the gifts made by both decedent and her husband, in 1941 and 1942, are lightly brushed aside (R. 36), in favor of death as the motive, based upon nothing but conjecture.

The ultimate conclusion that the gifts were made in contemplation of death, in the Opinion, is based *solely* on the Member's belief that, being an intelligent and religious person, the decedent must have known that she had cancer, in 1938, and thereafter, so that the gifts made in 1941 and 1942 were made in contemplation of death. Yet, the Doctor, an expert in operations involving tumors and cancer, said, on cross examination, p. 91:

> "Q. Doctor, you have, in your thirty years of practice, treated many cancer patients? A. Yes, sir.
>
> "Q. And you make it a practice of not telling the patient exactly what the difficulty is? A. Yes, sir.
>
> "Q. Will you tell us, please, whether or not, from your experience, you have not found that the patient generally figures it out for himself correctly? A. Well, sir, it is surprising how often they don't find it out correctly. They are dying of cancer, and they attribute it to something else. That is a known fact.
>
> "I now have two cancers of the lung, and neither one of them knows what it is, and one of them is bleeding.
>
> "You would expect them to know, but they don't know.
>
> "Q. Would that be true as to cancer of the breast? A. Most women are suspicious of tumors, but few take them or know them for what they are. Once you remove them, and they are not bothered, they don't know it. They haven't any knowledge of what it is.

"I have had people living eighteen or twenty years after that has happened. Usually, if you get them to live over five years, usually you will have them permanently well."

* * * * *

There are two subsidiary findings of the Tax Court and two such conclusions in its Opinion, which require comment, because they seem to have influenced the Tax Court in its ultimate conclusion, notwithstanding the uncontradicted testimony.

The Tax Court found:

(1) "This cancer had been six months in formation prior to the operation and had been perceptible for two months prior thereto." (R. 29, Respondent's Brief 3).

The testimony of the Doctor does not permit of such a flat statement.

The Doctor said, (R. 88–89):

"Q. Did she say how long it (the lump on the breast, in 1938) had been there? A. No. She said it was only a few days, but I knew, from my experience, that it had been there a couple of months.

"Q. How long, could you say? A. I don't know. It was certainly a matter of six months, from what I know from my thirty-four years of practicing.

"Q. It would have been perceptible for at least two months? A. It would have. But the patient wouldn't know of it unless she actually came across it, perhaps accidentally.

"Q. Did she say how long it was that she had found it? A. She had seen it only a few days, that is definite."

At page 134, decedent's sister, Belle Preston, also says that decedent had known about the lump on her breast only a few days, and that while it seemed to be like the one she herself had had removed some years before, she counselled decedent to tell her husband about it immediately. Further-

more, the operation was completely successful, the wound healed perfectly, and there was no cancer there. (R. 80–81).

(2) "The certificate of decedent's death gives the primary cause thereof as carcinoma of the lungs existing for ten months and the contributary cause thereof as chronic myocarditis which existed for one year." (R. 33, Respondent's Brief 5).

The Doctor said, (R. 93):

"May I say one thing about the death certificate, I wanted to make the statement—and I told the undertaker that—that Mrs. Bassett died of acute dilation of the heart, although she had a cancer of the lung.

"He immediately called the Department of Health, and he told me that it was out of order because, whenever anybody died they died of heart failure, so they asked me to put down the cause of death as carcinoma of the lung and acute dilation.

"Now most of these acute dilations of the heart are due to a blood clot or to age.

"I simply stated that because the Department of Health asked for it that way."

The Tax Court noted, in its Opinion:

(1) That there was a cessation of gifts by the decedent from 1932 to 1940.

The testimony of decedent's husband, (R. 97–98), is that they ceased their regular joint gifts from 1932 until 1940, because of the depression and of the fact that during that time his law practice had suffered very materially, (R. 97–98). The joint nature of the gifts made by the decedent and her husband, found at pp. 31, and 149–153, is virtually ignored.

(2) That decedent became inordinately energetic in the disposition of her resources, after January 23, 1941.

The fact that Mr. Bassett resumed making similar gifts at the same time, (R. 151) is again ignored.

Neither of these comments of the Tax Court are contained in the findings of fact; they are in the Opinion.

Furthermore, the uncontradicted testimony establishes impelling motives other than death for the making of these joint gifts.

At the conclusion of the statement of the facts, Respondent then says, (Brief in Opposition, p. 5):

> "The Tax Court held that the gifts made by the decedent during 1941 and 1942 were made in contemplation of death and as a substitute for testimentary disposition."

As pointed out above, the Tax Court so "held" in its Opinion. It made no such finding of fact. Its conclusion is an expression of opinion without evidence to support it, and in fact is contrary to the uncontradicted evidence.

In the presence of the testimony of the Doctor and of decedent's husband and sister, the Member having no special or expert knowledge of the subject, the Tax Court concluded that—being intelligent and religious, decedent must have known she had cancer and must, therefore, have made the gifts in 1941 and 1942, in contemplation of death.

While the Tax Court must necessarily draw inferences from the facts, to determine the ultimate fact required to be found in this case, that Court should not be permitted to base its decision on what it believes goes on in the mind of an intelligent and religious woman—when that opinion is contrary to all uncontradicted testimony.

It is inconceivable that, the foregoing being true, the Court of Appeals could conclude that the decision of the Tax Court was not "clearly erroneous".

Indeed, the sanction by the Court of Appeals of the departure by the Tax Court from the usual course of judicial proceedings is urged to be alone ample grounds for granting a review of this case.

CONCLUSION

It is respectfully submitted that the question presented in this case involves important questions of Federal law which have not, but should be, settled by this Court, and was decided in a way in conflict with applicable decisions of this Court, and that the Court of Appeals so far departed from the usual course of judicial proceedings and, at the same time, so far sanctioned such departure by the Tax Court, as to call for an exercise of this Court's power of supervision. The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX I

ANNUAL REPORTS OF COMMISSIONER OF INTERNAL REVENUE

Year Ending June 30	*Number of Returns Filed*		*Amounts Collected*
	Estate Tax	*Gift Tax**	*Gift Tax*
1933	8,504	1,716	$ 4,616,661.96
1934	11,210	3,619	9,153,076.06
1935	13,133	11,410	71,671,277.00
1936	13,252	22,590	160,058,761.00
1937	15,244	17,046	23,911,783.00
1938	17,794	16,601	34,698,739.00
1939	18,265	13,614	28,435,597.00
1940	18,908	14,435	29,185,118.00
1941	19,044	17,369	51,863,714.00
1942	19,633	30,048	92,217,383.00
1943	18,430	23,872	32,965,079.00
1944	17,205	20,772	37,744,732.00
1945	17,927	22,939	46,917,583.00
1946	19,704	23,554	47,231,605.00
1947	23,209	27,046	70,497,262.00
1948	ESTIMATED		65,000,000.00
1949	ESTIMATED		66,000,000.00

* Gift tax returns are based upon taxable net gifts made in the preceding calendar year, after exclusions and in excess of exemptions.

APPENDIX II

INTERNAL REVENUE CODE

Sec. 811(c). Transfers in Contemplation of, or Taking Effect at Death.—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. *Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;* (Italics supplied).

APPENDIX III

REVENUE ACT OF 1926

Sec. 302(c). To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. *Where within two years prior to his death* but after the enactment of this Act and without such a consideration *the decedent has made a transfer or transfers* by trust or otherwise, *of any of his property* or an interest therein, *not admitted or shown to have been made in contemplation of* or intended to take effect in possession or enjoyment at or after his *death, and the value or aggregate value,* at the time of such death, *of the property or interest so transferred to any one person is in excess of $5,000, then, to the extent of such excess,* such transfer or transfers shall be deemed and held to have been made in *contemplation of death* within the meaning of this title. *Any transfer of a material part of his property* in the nature of a final disposition or distribution thereof, *made by the decedent within two years prior to his death* but prior to the enactment of this Act, without such consideration, shall, *unless shown to the contrary, be deemed to have been made in contemplation of death* within the meaning of this title. (Italics supplied.)

APPENDIX IV

Hearings Before Ways and Means Committee on

REVENUE REVISION OF 1942

(Statement of Roy C. Osgood, Chicago, Ill., Representing Committee on Federal Finance, United States Chamber of Commerce.)

Page 2819:

Tax Increases by Exemption Changes

* * * * *

(b) Gift tax exclusion of $5,000 per donor.—The proposal to limit the gift tax exclusion to $5,000 for each donor regardless of the number of donees has a direct effect upon the morale of our armed forces. It is a well-known fact that many individuals with dependents have enlisted in the Army or Navy with the understanding that their parents will take adequate care of such dependents. This proposal will in many cases intensify such a continued responsibility. A father with sons in the armed services will find it more difficult to care for sons' wives and children.

It may be pointed out that in addition to the proposed exclusion there is the general gift tax exemption. However, in cases where liberal exclusions will be most needed the general exemption will have been exhausted in prior years. The imposition of increased income taxes along with the proposed gift taxes makes the continued care of such dependents a heavier burden for persons of moderate capital savings.

It must be remembered that the gift tax exclusion represents the only means by which, without adding to

his tax burden, one can care for persons to whom the donor owes a moral duty to support and maintain. Over-age servants, indigent relatives, widowed daughter-in-law, education of grandchildren, all must come within the gift tax exclusion or the ability to provide for their sustenance may cease. On every dollar of gift over the exclusion the donor must pay a gift tax and if the gift is made from income its full amount is subject to income tax where received by the donor. Thus in a wartime support situation the donor has, first the added financial burden, second an added income-tax burden on the income received and third a gift-tax burden for all gifts above the amount of the exclusion.

One method of correcting the situation would be to exclude from gift tax all sums expended for the support, maintenance, and education of persons to whom the donor owes any moral obligation. This, however, would result in so many administrative difficulties that it is impracticable. Moral obligations are difficult to test objectively and if a subjective test were applied the door to avoidance and evasion would be opened. Hence the only logical solution is a gift tax exclusion similar to that existing at the present time.

(There was also a statement by Ellsworth C. Alvord, as Chairman of the Committee on Federal Finance of the Chamber of Commerce of the United States, on the subject of extending the exclusions from the gift tax. P. 2809.)